

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MONA SALCIDA MURILLO,

Plaintiff,

v.

D. GODFREY, *et al.*

Defendants.

No. 2:23-cv-00667-KJM-EFB (PC)

ORDER

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in an action brought under 42 U.S.C. § 1983. On May 20, 2024, the magistrate judge entered an order on a variety of nondispositive motions. Order, ECF No. 54. In relevant parts, the magistrate judge determined plaintiff's January 11, 2024 is the operative complaint and supersedes plaintiff's prior complaints. *Id.* at 2. The magistrate judge concluded the complaint stated "potentially cognizable claims," *id.*, and denied defendants' motion to dismiss without prejudice to filing a motion addressed solely to the operative complaint, *id.* at 5. Citing Federal Rule of Civil Procedure 72(b), plaintiff objects to the magistrate judge's order and requests the district judge review that order. Objs., ECF No. 55. Specifically, plaintiff argues the magistrate judge erred by allowing defendants to file a new motion. *See generally id.*

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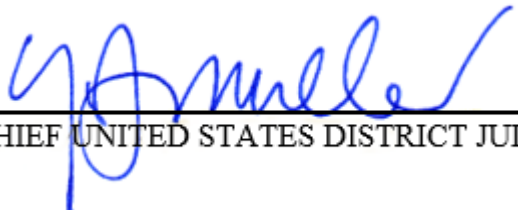
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1 Rule 72(b) governs the procedure for findings and recommendations. The magistrate
2 judge's order was not a findings and recommendations. Rather, it appears plaintiff is challenging
3 the magistrate judge's order under Rule 72(a).

4 Under Rule 72(a), a district judge must modify or set aside an order of the magistrate
5 judge that is clearly erroneous or contrary to law. Plaintiff argues the magistrate judge erred by
6 "affording defendants a bite at a second apple." Objs. at 1. However, the magistrate judge did
7 not consider the merits of defendants' motion. *See generally* Order. Rather, the magistrate judge
8 screened plaintiff's complaint, found that it stated a potentially cognizable claim and denied
9 defendants' motion to dismiss without prejudice to renewal. *Id.* The court finds no clear errors or
10 holdings contrary to law in the magistrate judge's order. Accordingly, plaintiff's June 3, 2024
11 motion (ECF No. 55) is DENIED.

12 SO ORDERED.

13 DATED: August 23, 2024.

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16 CHIEF UNITED STATES DISTRICT JUDGE
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